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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 113 OF 1997

Mahindra Ugine Steel Co. Ltd. ... Petitioner

V/s

Khanderao Vithal Ingale & anr. ... Respondents

Mr. C.U. singh with Mr. Ankit Mehta i/by Haresh Mehta & Co. for the petitioner.

Mr. K.S. Bapat for the respondent No.1.

CORAM: SMT. NISHITA MHATRE, J.

DATED: 28TH NOVEMBER, 2006.

P.C.:

1. The petitioner has challenged the order of the Industrial Court passed in Revision Application No. 42 of 1996. The Industrial Court has allowed the revision application filed by the respondent workman herein and set aside the order dated 22.1.1996 of the Labour Court. While doing so, the Industrial Court had directed that the Labour Court to record evidence afresh in the matter before deciding the complaint.

2. The facts in this case are not disputed. The chargesheet was issued on 7.4.1991 to the respondent

workman alleging that he had committed certain acts of misconduct. An enquiry was instituted into the charges. While the enquiry was pending, one Kale who was the supervisor of the workman, was under cross-examination. According to the petitioners, the delinquent workman accosted Kale at night and beat him. As a result, Kale refused to report for work and sent his resignation a month later, contending therein that he had been threatened by the respondent workman and he had therefore resigned from service. A second chargesheet was issued to the respondent workman and an enquiry in respect of that chargesheet was conducted. As both enquiries were completed, the petitioners dismissed the respondent workman from service based on the findings of the enquiry officer in both enquiries.

3. The workman filed Complaint (ULP) No. 182 of 1992 challenging his dismissal. This complaint is filed under Item 1 of Schedule IV of the MRTU & PULP Act, 1971. By the order of 1st December, 1994, the Labour Court came to the conclusion that the enquiries held against the workman was fair and proper and there was no procedural infirmity in respect of these enquiries. By order dated 22.1.1996, the Labour Court dismissed the complaint and concluded that there was no perversity in the findings recorded by the enquiry officer in both the

enquiries. Being aggrieved by this order of the Labour Court, the workman preferred Revision Application (ULP) No. 42 of 1996. This application was decided on 23.9.1996. The Industrial Court took the view that the Labour Court had incorrectly drawn the conclusion that the findings of the enquiry officers were not perverse.

4. Kale's evidence remained incomplete since he was not available for being cross-examined and did not attend the second enquiry either. In such circumstances, the petitioners sought to place reliance on the evidence of eye witnesses to the incident when the workman disobeyed his superior, Kale. The Industrial Court, while allowing the revision application, has observed that the enquiry officers have placed reliance on hearsay evidence instead of discarding it. This reasoning of the Industrial Court cannot be accepted. Hearsay evidence is not an anathema in domestic enquiries as held in the case of **State of Haryana & anr. v/s Rattan Singh, reported in AIR 1977 SC 1512**. To decide whether charges were proved at an enquiry, the Supreme Court has observed thus :-

> "The simple point is, was there some evidence or was there no evidence - not in the sense of the technical rules governing regular court

> proceedings but in a fair commonsense way as men of understanding and worldly wisdom will accept. Viewed in this way, sufficiency of evidence in proof of the finding by a domestic tribunal is beyond scrutiny. Absence of any evidence in support of a finding is certainly available for the court to look into because it amounts to an error of law apparent on the record."

In the present case, the Industrial Court has obviously being swayed by the fact that, in his opinion, hearsay evidence need not be believed or accepted at a domestic enquiry. This has led the Industrial Court to ignore the other contentions raised on behalf of the parties. In such circumstances, in my view, it would be appropriate to remand the revision application for being decided afresh. The Industrial Court to dispose off the revision application within three months from today. Parties shall appear before the Industrial Court on 18th December, 2006.

5. Petition allowed. Rule made absolute.

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